

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1858 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MANJEETSING JAGDISHLAL HUDA (SHIKH)

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/11/1999

ORAL JUDGEMENT

#. Heard learned counsel Miss D.R.Kacchhava, for the petitioner and learned A.G.P. Mr.D.P.Joshi, for the respondent nos.1,2 and 3.

#. The detention order dtd.19.1.1999 passed by respondent no.1 Commissioner of Police, Ahmedabad against the petitioner in exercise of power conferred under

Sec.3(1) of Gujarat Prevention of Anti Social Activity Act 1985 ("PASA" for short) is challenged in the present petition under Article 226 of Constitution of India.

#. The grounds of detention supplied to the petitioner under Sec.9 (1) of PASA , copy of which is produced at Annexure-B indicates that three prohibition cases have been registered against the petitioner on 16.1.98, 27.10.98 and 17.1.99 respectively. That in each case, country made liquor was seized from the possession of the petitioner. Except the case registered at Sr. No.24/98 two other cases are pending investigation. The grounds of detention also indicate that two witnesses on assurance of their anonymity have given information regarding anti social activity of the petitioner of incident dated 29.10.98 and 2.1.99 respectively. That in consideration of the above-stated material respondent no.1 as detaining authority has come to conclusion that petitioner is a "bootlegger" within the meaning of Sec.2 (b) of PASA. That resort to general provision of law being insufficient to prevent the petitioner from continuing his anti social activity which prejudicially affects the maintenance of public order, detention order is necessary and hence impugned order is passed.

#. Petitioner has challenged detention order on numerous grounds. It has been contended on behalf of petitioner at bar that on the date of passing of impugned order petitioner was in judicial custody and the detaining authority has failed to consider the aspect of cancellation of bail as less drastic remedy, which has vitiated the subjective satisfaction rendering the impugned order invalid.

#. In the matter of Jubedabibi Rashidkhan Pathan Vs. State of Gujarat, reported in 1995 (2) G.L.R. P.1134, the Division Bench of this court has expressed a view that non consideration of less drastic remedy like cancellation of bail available under Sec.437 (5) of Cr.P.C. suggest non application of the mind on the part of the detaining authority vitiating subjective satisfaction rendering the impugned detention order invalid. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No.1056/99 decided on 15.9.99 by this court (Coram : C.K.Thakkar & A.L.Dave JJ).

#. In the instant case the penultimate para of the grounds of detention suggest that detaining authority has considered the fact that petitioner-detenu was in

judicial custody. However, he has shown apprehension that petitioner is likely to move bail application and in all possibility would be released on bail and after getting released, he is likely to continue his antisocial activity which would prejudicially affect maintenance of public order. Thus, the detention order appears to have been passed on apprehension without considering the aspect of cancellation or opposing of bail under Sec.437 (5) of Cr.P.C. and as such, subjective satisfaction has been vitiated rendering the impugned order invalid.

#. As the petition succeeds on the above raised point alone, it is not necessary to consider other contentions raised by the petitioner.

#. On the basis of the aforesaid discussion, petition is allowed. The detention order dtd.19.1.1999 passed by the respondent no.1 against the petitioner is hereby quashed and set aside. Petitioner Manjeetsing Jagdishlal Huda (Shikh) is ordered to set at liberty forthwith, if not required in any other case.

#. Rule to that extent made absolute.

kks